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ABSTRACT

A report on a bill to delay the effective date for the denial of federal aid to students who have failed to comply with draft registration requirements is presented. The bill also directs the Comptroller General to conduct an ongoing study of the effectiveness of the Department of Defense Authorization Act of 1983 (Solomon/Hayakawa amendment) in enforcing selective service registration requirements. Proponents of the bill believe that enactment of a 7-month delay in the implementation of the amendment will avert possible problems in the delivery of federal student aid for the 1983-1984 academic year. Proponents also note that higher education institutions are confused about how to proceed to comply with the legislation. Attention is directed to the legislative history of the bill, a section-by-section analysis, and a Congressional Budget Office cost estimate. Dissenting views on the bill and federal court action are also considered, and comments on the bill by E. Thomas Coleman, Bill Goodling, Steve Gunderson, and Frank Harrison are included. (SW)

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98TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 98-74
1st Session } { Part 1

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DRAFT REGISTRATION IMPLEMENTATION

APRIL 28, 1983.—Ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

DISSENTING, INDIVIDUAL, ADDITIONAL, AND SEPARATE VIEWS

[To accompany H.R. 2145 which on March 16, 1983, was referred jointly to the Committee on Armed Services and the Committee on Education and Labor]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2145) to delay the effective date for the denial of Federal educational assistance to students who have failed to comply with registration requirements under the Military Selective Service Act from July 1, 1983 to February 1, 1984, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, line 5, insert "and section 504 of the Job Training Partnership Act (29 U.S.C. 1504)" before "on enforcement."

Page 2, line 6, strike out "such Act" and insert in lieu thereof "the Military Selective Service Act."

Page 2, line 10, insert before the period at the end of the sentence the following: "or programs under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)."

INTRODUCTION

H.R. 2145, introduced by Representative Paul Simon on March 16, 1983, with the bipartisan cosponsorship of a majority of the Subcommittee on Postsecondary Education, delays the effective date of section 1113(b) of the Department of Defense Authorization Act of 1983 (commonly referred to as the Solomon/Havakawa amendment) from July 1, 1983 to February 1, 1984. The bill also directs the Comptroller

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General to conduct an ongoing study of the effectiveness of the Solomon/Hayakawa amendment in enforcing selective service registration requirements and to report the results of the study to the Congress no later than March 1, 1985.

The Solomon amendment (its House sponsor was Representative Gerald Solomon, Republican of New York) mandates that students required to register with the Selective Service under the Military Selective Service Act must do so in order to receive Federal student financial assistance under title IV of the Higher Education Act. Section 1113 directs the Secretary of Education, in consultation with the Director of the Selective Service, to issue regulations implementing the provisions of the amendment.

When the Solomon amendment was offered on the floor of the House on July 28, 1982, to H.R. 6030, the Department of Defense Authorization Act of 1983, it provided that the Selective Service System and the Secretary of Education were responsible for determining whether a student was registered with the Selective Service. Based upon that determination, the Secretary of Education was to decide whether or not to allow the student to receive Federal financial assistance under title IV of the Higher Education Act. Because the amendment placed enforcement of draft registration completely in the hands of the Secretary of Education and the Selective Service System, both the Director of the Office of Management and Budget (OMB) David Stockman and Secretary of Education Terrel Bell responded that the procedure outlined in the amendment was unworkable. These and similar concerns were discussed on the floor for 2 hours during debate on the Solomon amendment. The main issues discussed were the lack of a conscientious objector status provision in current draft registration laws; the regulatory burden the Solomon amendment would place on postsecondary institutions and the Department of Education; and the impracticality of attempting to implement the amendment as drafted given the decentralized nature of Federal student aid eligibility determinations (except Pell grants) and the award process. The amendment was finally adopted in an amended form by a vote of 303 to 95. The Solomon amendment was very similar to the Hayakawa amendment which had already been adopted in the Senate, and the House and Senate conferees—after rewriting the amendments—agreed to the following language:

> (2) In order to receive any grant, loan, or work assistance under title IV of the Higher Education Act of 1965, a person who is required under section 3 (of the Military Selective Service Act) to present himself for and submit to registration under such section shall file with the institution of higher education which the person intends to attend or is attending, a statement of compliance with section 3 and regulations issued thereunder.
>
> (3) The Secretary of Education, in consultation with the Director (of the Selective Service) shall prescribe methods for verifying such statements of compliance filed pursuant to paragraph (2). Such methods may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of persons who have submitted such statements of compliance.

The provisions were to be effective for periods of instruction beginning after June 30, 1983.

Cognizant of the burden that the amendment could place on institutions of higher education, the conferees inserted the following report language:

> The conferees urge that such regulations and procedures necessary to implement this provision minimize the administrative burden on colleges and universities and the delays in processing aid applications and awards.

The bill was signed into law (Public Law 97-252) by the President on September 8, 1982.

In fulfilling his obligation under the law, the Secretary of Education published regulations in the form of a notice of proposed rulemaking (NPRM) on January 27, 1983. The regulations which were proposed caused great concern among institutions of higher education, lending institutions, students, and in the Congress. As a result of reviewing more than 1,300 comments from the public and hearings held by the House Education and Labor Committee's Subcommittee on Postsecondary Education and a subsequent letter to the Secretary from subcommittee members, the NPRM was substantially modified and the final regulation was published in the Federal Register on April 11, 1983.

At the same time the Secretary of Education and the Director of the Selective Service were developing regulations to implement the Solomon amendment, the Third Division of the U.S. District Court, Minnesota District, was hearing arguments [*DOE v. Selective Service System and the United States Department of Education and ROE v. Selective Service System and the United States Department of Education*] on the constitutionality of the Solomon amendment. On March 9, 1983, U.S. District Judge Donald D. Alsop enjoined "the Selective Service System and the United States Department of Education and their agents, servants, employees and representatives, and all persons acting by, through, for or in concert with them * * * from enforcing section 1113 of the Department of Defense Authorization Act of 1983." However, the court specifically indicated that the defendants were "* * * not enjoined from promulgating and adopting regulations pursuant to section 1113 pending final disposition of this action."

Analysis of the Regulation

In publishing the NPRM on January 27, 1983, the Department of Education squarely placed the burden of enforcing the Solomon amendment on the shoulders of postsecondary education institutions and students. Specifically, the NPRM required:

> All students, including females, to file registration compliance forms indicating that they were registered with the Selective Service or indicating why they did not have to be registered (female, on active duty, not yet 18, born before 1960, or a permanent resident of the trust territories);
>
> Students who certify that they are registered with the Selective Service to verify their registration by submitting to the institution a copy of the registration acknowledgment

letter (SSS Form 3A or 3A–s) received from the Selective Service when the student registered;

Institutions to maintain on file copies of the registration compliance forms and registration acknowledgement letters;

Institutions to refuse to disburse funds to students or certify them for guaranteed student loans (GSL) or other forms of aid, if they refuse to file the registration compliance forms;

Students who turned 18 after March 31 be allowed to apply for Federal student financial assistance by using an affidavit stating that they had turned 18 and had not yet received their registration compliance letter. Other students who had previously registered but did not have the registration acknowledgement letter could, at the institution's discretion, also file an affidavit to receive aid. However, only students who had recently turned 18 were eligible GSL's without the acknowledgement letter. After each student filed the affidavit, he had 120 days in which to produce the letter. If he failed to do so all awards he received were considered to be unauthorized and the institution would have to recover the aid. If a guaranteed student loan had been received, the institution would have to notify the lender. The student was no longer eligible to receive interest payments on the loan and the lender had the right to demand immediate repayment.

Sudents who were denied aid because they failed to file the compliance form or provide verification of registration be given the right to request a hearing from the Secretary of Education in order to prove that he was in compliance with the law.

The NPRM contained none of the statutory due process provisions included in section 1113. These provisions must be followed before aid is withdrawn or denied.

Separate procedures were outlined for the 1983–84 academic year. Under those guidelines, all students who applied for Federal student financial assistance prior to July 1, 1983, had to be notified to return to their student aid office in order to fill out the compliance form and, if so required, to provide the aid officer with the registration compliance letter. If a student refused to comply, he/she was denied aid and had to repay any moneys received.

In response to the regulations the Subcommittee on Postsecondary Education held hearings on February 23 and 24, 1983. Witnesses at the hearings outlined specific problems with the regulations and the administrative burdens that would be placed on colleges and universities. John Brugel, director of student financial aid at Pennsylvania State University stated:

> The proposed verification system is seriously flawed. It fails to follow the dictates of common sense and most importantly, it fails to follow the intention of the Congress as it places the full burden of the process on students and postsecondary education institutions.

Mr. Brugel further indicated that at his institution it would be necessary to recall 30,000 students after July 1, 1983, in order to have them complete the compliance form for the 1983–84 academic year.

As a result of information received during the hearing, members of the Subcommittee on Postsecondary Education wrote the Secretary expressing their concerns and offering the following alternatives to the proposed regulation:

> Only male students, who are required to register, should submit to the appropriate school, college, or university evidence of his registration or a statement of his compliance with the Military Selective Service Act;
>
> The institution of higher education should only be required to provide to the Selective Service copies of the statement of compliance (for those male students who failed to provide satisfactory evidence of registration with the Selective Service), or a list of the names, addresses, et cetera, of those students who completed a statement of compliance (at the option of the institution);
>
> Title IV funds should be disbursed when the institution has either evidence of registration or a statement of compliance in its possession. Preaward certification should not result in delays in awards to any student.
>
> All verification and enforcement, except a good faith attempt to recover student aid funds obtained in violation of 20 U.S.C. 1097, should be carried out by the Department and/or the Selective Service System—collection of student aid funds on the basis of a false affidavit should be the exclusion responsibility of the Department of Education;
>
> Any proposed denial of title IV, student assistance must be preceded by notice, opportunity to respond in writing, and the opportunity to be heard (at the discretion of the Secretary). No aid can be denied without complying with these minimum statutory due process standards.

The members also stated that they did "not believe the Department's proposed rule is in accord with either the letter of the law or the intent of Congress" and listed the specific provisions which they believed did not meet congressional intent:

> *Paperwork burden.*—The proposed rule places unnecessary paperwork burdens and time-consuming counseling responsibilities on institutions of higher education by making them implement a law Congress only intended that they have a passive role in. Requiring all student aid recipients—not just registration-age males—to complete a compliance statement is unnecessary and beyond the command of the statute. The verification of all applications before title IV funds are disbursed is also unnecessary and beyond the plain meaning of the statute.
>
> *Award delays.*—If verification for all student aid applications is required before disbursement, delays in the award of title IV funds is inevitable. No reading of section 1113(4) of Public Law 97–252 can construe that language to require universal verification nor that verification must precede disbursement, especially if delays in making awards to students resulted. If the proposed rule were followed, a student who registered, or who was not required to register could be denied student aid because he could not establish that fact in 120 days.

Temporary awards.—This concept, advanced in the proposed rule, will wreak havoc on the award process, especially as it affects guaranteed student loans. Both lenders and guarantors have advised the subcommittee they will not make loans to students whose eligibility might be considered "temporary" because they "* * * may experience increased default rates as a result of the proposed regualtions, and because our reinsurance formulas may be adversely affected. * * *" The subcommittee was told during its February 24 hearing: "Institutions and lenders will probably not process loan applications for students unless the students file the required documents." This type of lender reaction is understandable and adds to the complexity created by the proposed rule which we believe must be avoided.

Enforcement.—The entire burden of enforcement is misplaced by the regulation. The conferees, in adopting major modifications in the Solomon/Hayakawa amendments, took special cognizance of the implementation problems associated with the provision. The executive branch's expressed intention to place the entire burden of enforcement on post secondary institutions and students is unwise and unworkable. In our view, the intention of the Solomon/Hayakawa amendment is best effectuated by placing the burden of verification and enforcement on the Selective Service System. Institutions of higher education should not have the burden of enforcement placed on them.

On April 11, 1983, the Department of Education published a final regulation implementing the Solomon amendment. While it is significantly altered from the proposed rule—to meet most of the concerns raised by members of the subcommittee in regard to the 1983–84 and 1984–85 academic years—it returns to the procedures outlined in the proposed regulation for verification of registration for the 1985–86 and subsequent academic years.

With the exception of requiring males only to complete the compliance form, all other points expressed in the subcommittee's letter to the Secretary have been accepted and appropriately modified for the 1983–84 and 1984–85 academic years. The Department contends that it is requiring female students to complete the form because many schools cannot tell the gender of an individual by his/her school records or even his/her name. Apparently, some institutions have made this comment and it does have validity. Students will not be required to file verification of their registration status for the next 2 years.

With regard to the procedures to be followed for the 1985–86 school year and subsequent years, the Department has returned to requiring students to file verification documents (that is, the registration acknowledgement letter from the Selective Service) with the institution he is attending and the institution is required to keep the document on file. The obvious question which arises is—if the compliance method is sufficent for 2 years, why is it necessary to alter it beginning in 1985–86?

The only positive change in procedures for the 1985–86 and subsequent academic years is that all students who do not possess acknowl-

edgement letters would be allowed to receive an award based on an affidavit. All students can receive aid technically under the new regulation, but there is still the problem with banks and lending institutions being unwilling to allow students to have loans if they have applied by affidavit. A student who uses an affidavit has 120 days to file verification documents. If he fails to do so, all awards he received are considered to be unauthorized and banks can demand immediate repayment. The major problem is that students who do not produce the verification documents are no longer entitled to receive interest payments on the loans. That places lending institutions in a vulnerable position—raising a serious question of lender willingness to make a loan to students whose registration status is in question.

A change that will make compliance easier for institutions is the Department's assumption of collection responsibility for all student aid funds given to those who subsequently fail to verify registration. Under the final regulation, institutions need only notify the Secretary and the lending institution if the student fails to fulfill his obligation.

A problem still exists if aid is denied to students without complying with the statutory due process provided in section 1113(4). The February 28, 1983, letter to the Secretary indicated that this represents a serious problem which the final regulation has failed to address.

Need for this Legislation

The committee has carefully analyzed the legislative history of the Solomon amendment and the development of the implementing regulations. Although the final regulation is more responsive to the need of higher education institutions than the proposed rule a series of events have occurred which jeopardize the ability of colleges and universities to implement the section 1113 of the Military Selective Service Act for the 1983–84 academic year.

H.R. 2145 postpones the effective date of the Solomon amendment until February 1, 1984, in order to remove the cloud hanging over postsecondary education institutions regarding implementation of the law for 1983–84 school year. There are two compelling reasons for postponing the implementation of the regulation. The most critical of these is that schools across the country are in a real quandary about how to proceed.

The temporary injunction issued on March 9, 1983, by a Minnesota Federal District Court has been the subject of various interpretations regarding whom it applies to and what actions are prohibited. Most analysts have agreed that the injunction has nationwide application. However, the Department of Education legal counsel expressed a more narrow interpretation that it applied only to the Federal district in which it was handed down. Following this interpretation the Department of Education sent higher education institutions forms containing registration compliance certifications with instructions to have students complete the forms when they applied for financial assistance. The Selective Service also sent a letter and posters to institutions stating that students must register to receive Federal student assistance. At least two universities have taken steps to enforce the Solomon amendment despite the existence of the temporary injunction. On April 1, 1983, the Justice Department sent a strongly worded letter

to the Department of Education warning that the Department's actions "may well violate Judge Alsop's preliminary injunction" and advising the Department that they should *not* (emphasis added) compel students to complete the draft registration statement" and should process applications regardless of whether the statement has been completed. Although the Department of Education's actions may be at variance with Judge Alsop's order of March 9, 1933, this meant that any student who did not valuntarily file the certification form would have to return to the student financial aid office (in order to fill out the compliance form), if the injunction is lifted, or if the section 1113 is found to be constitutional.

Even without the complications of the temporary injunction, implementation of section 1113 for the 1983–84 school year would be problematical. Students began applying for student aid in February before the temporary injunction was issued and section 1113 could be implemented. At that time, postsecondary institutions did not have the necessary forms for students to fill out. Moreover, the final regulation will not become effective until mid-May (while the status of the underlying statute remains uncertain) and institutions will be in the position of trying to proceed with processing of applications without knowng whether the law or the regulatons should be followed. Recalling students after July 1, 1983, to fill out the compliance forms would be both disruptive and extremely costly.

In testimony before the subcommittee, Dr. Dallas Martin, executive director of the National Association of Student Financial Aid Administrators, urged the subcommittee to favorably consider delaying the implementation date on the basis of the following factors:

> According to Selective Service at least 96 percent of all aid recipients have registered;
>
> Final regulations will not be available until at least May;
>
> Schools must continue to process aid applications for 1983–84 despite the pending suit and unfinished regulation in order to serve students properly;
>
> There is a strong likelihood that the legal challenges will not be resolved by the courts before July 1, 1983;
>
> Institutions would find it disruptive and extremely costly to implement the procedures, if allowed to stand, in midyear; and
>
> Many innocent students could be adversely affected if there is not an immediate solution.

Similarly Philip R. Rever, vice president of the Higher Education Assistance Foundation, a multistate GSL lender, outlined the following possible results if a delay bill were not enacted:

> Congress may have to choose between "approving" unacceptable regulations or risk the consequences of not having "approved" final regulations if and when the injunction is lifted.
>
> Participants in the aid program such as institutions and guarantors may have to print and store millions of documents specifically related to the Solomon amendment so institutions are prepared to quickly implement the final regulations if necessary.

> Modifications to information exchange systems among lenders institutions and guarantors may have to be planned and made to accommodate new requirements and the law if the injunction is lifted.

Dr. Rever went on to explain:

> Unless final regulations are "approved" by Congress and all required information collection documents and information exchange systems are in readiness, shortly after final regulations are "approved" by Congress, all parties risk disaster if the preliminary injunction is lifted and the law becomes effective shortly thereafter * * * some guarantors, lenders, and institutions will be reluctant to incur the sizable expense of preparing to comply with a law that may ultimately be judged unconstitutional. It seems unlikely that the "student loan delivery system" which is composed of thousands of lenders, dozens of guarantors, thousands of institutions, and millions of students, will be uniformly ready if the preliminary injunction is ever lifted.

The uncertainty of the present situation clearly requires the Congress to act in a reasonable and prudent manner to insure that the system of delivering Federal student financial assistance to students is not disrupted. From a practical standpoint it is imperative that the effective date of the law be delayed until February 1, 1984, in order to allow institutions and students to implement the requirements in an efficient nondisruptive fashion.

Legislative History of H.R. 2145

On February 23 and 24, 1983, the Subcommittee on Postsecondary Education held oversight hearings on the proposed regulations implementing the Solomon amendment to the Department of Defense Authorization Act of 1983. At that time, testimony was received from the Department of Education, the Selective Service System, Members of Congress, and from representatives of the National Association of Student Financial Aid Administrators, college and university presidents, financial aid officers, a lending institution, and a student. Based upon concerns raised at those hearings, some subcommittee members wrote a letter to the Secretary commenting on the proposed regulations and suggesting alternative provisions. On March 16, 1983, H.R. 2145 was introduced by Mr. Simon, the subcommittee chairman. It was jointly referred to the Committee on Education and Labor and the Armed Services Committee. A previous bill, H.R. 1622 had been introduced by Representative Patricia Schroeder (Democrat of Colorado) on February 23, 1983, which would delay implementation of the law until July 1, 1984. Two bills, H.R. 1286 and H.R. 1567 introduced by Representative Robert Edgar (Democrat of Pennsylvania) and the late Representative Phillip Burton (Democrat of California), respectively, on February 7, 1983, and February 22, 1983, would repeal the Solomon amendment. On March 23, 1983, the Subcommittee on Postsecondary Education held a hearing on the bills. Dr. Gary Jones, Under Secretary of the Department of Education, Dr. Dallas Martin, executive director of the National Association of Student Financial

Aid Administrators, and Dr. Philip Rever, vice president of the Higher Education Assistance Foundation, all testified. Immediately following the hearing, the subcommittee reported H.R. 2145 favorably by voice vote. On April 13, 1983, the full Education and Labor Committee met and ordered H.R. 2145 reported by a vote of 18 to 8, with a committee amendment, to the House. No action has yet been taken by the Armed Services Committee.

A companion bill, S. 781 was introduced in the Senate by Senators Stafford, Pell, and Hatfield and referred to the Committee on Labor and Human Resources. Senator Durenburger introduced S. 122 to repeal the Solomon amendment. No action has been taken by the Senate.

Committee Explanation of Legislation

The major thrust of the bill is to postpone the effective date of section 1113 of the Military Selective Service Act. H.R. 2145 does not address the philosophical or constitutional issues related to the Solomon amendment. It simply postpones the implementation of the law until February 1, 1984. That means that students applying for student assistance for the 1983–84 academic year will not have to certify that they are registered with the Selective Service. The first students who will be affected are those attending proprietary schools with classes begining after January 31, 1984, and students enrolled in institutions who are on trimester or quarter systems where the last term begins after January 31, 1984.

The bill further requires the U.S. Comptroller General to conduct an ongoing study of the effectiveness of using student assistance programs under title IV of the Higher Education Act as a method of enforcing registration requirements with the Selective Service. An amendment offered by Representative Thomas Petri (Republican of Wisconsin) during the full Education and Labor Committee markup extended the study to also include the effectiveness of using programs under the Job Training Partnership Act of 1982 as a vehicle for enforcing Selective Service registration requirements. The Comptroller General is to report his findings to the Congress no later than March 1, 1985.

Inflationary Impact Statement

Pursuant to clause 2(1)(4), rule XI of the Rules of the House of Representatives, the committee estimates that the enactment of H.R. 2145 will have little inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the committee that the inflationary impact of this legislation as a component of the total Federal budget is negligible.

Oversight Findings and Recommendations of the Committeee on Education and Labor

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, this report embodies the findings and recommendations of the Subcommittee on Postsecondary Education, established pursuant to clause 2(b)(1) of rule X of the House of Representatives and rule 18(a) of the rules of the Committee on Education and Labor.

Oversight Findings and Recommendations of the Committee on Government Operation

In compliance with clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the committee states that no findings or recommendations of the Committee on Government Operations were submitted to the committee with reference to the subject matter specifically addressed by H.R. 2145.

Cost Estimate

The Congressional Budget Office has provided the following estimates of the costs which will be involved in implementing this legislation. The committee concurs in these estimates and adopts them in compliance with clause 7 of rule XIII. No cost estimates have been received from any other Federal departments or agencies.

The Congressional Budget Office letter follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 20, 1983.

Hon. Carl D. Perkins,
Chairman, Committee on Education and Labor, House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has examined the Federal court cost impact of H.R. 2145 as ordered reported from the House Education and Labor Committee. The bill would delay for 7 months the effective date for the denial of Federal education assistance to students who have failed to comply with registration requirements under the Military Selective Service Act. In addition, the bill would request the General Accounting Office to study the efficiency and effectiveness of enforcing such requirements through Federal student assistance and job training programs.

Based on our analysis, there would be no impact on the Federal budget as a result of the 7-month delay since this bill does not change current appropriations for the 1983–84 school year. The cost of the General Accounting Office study could range from $80,000 to $200,000 assuming that two- to five-person years were required. This bill would not affect State and local government budgets.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

James Blum
(for Alice M. Rivlin, Director).

Section-by-Section Analysis on H.R. 2145

To delay the effective date for the denial of Federal educational assistance to students who have failed to comply with registration requirements under the Military Selective Service Act from July 1, 1983 to February 1, 1984, and for other purposes.

Section 1: This section delays the implementation of section 1113(b) of the Department of Defense Authorization Act of 1983 (Solomon amendment) from July 1, 1983 until February 1, 1984.

Section 2: The Comptroller General of the United States is directed to conduct an ongoing study of the impact of the Solomon amendment on the enforcement of draft registration requirements and the effectiveness and efficiency of enforcing the requirements through student financial aid programs and programs under the Job Training Partnership Act of 1982. The report must be submitted to Congress no later than March 1, 1985.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 1113 of the Department of Defense Authorization Act, 1983

Enforcement of Military Selective Service Act

Sec. 1113. (a) Section 12 of the Military Selective Service Act (50 U.S.C. App. 462) is amended by adding after subsection (e) the following new subsection:

"(f)(1) Any person who is required under section 3 to present himself for and submit to registration under such section and fails to do so in accordance with any proclamation issued under such section, or in accordance with any rule or regulation issued under such section, shall be ineligible for any form of assistance or benefit provided under title IV of the Higher Education Act of 1965.

"(2) In order to receive any grant, loan, or work assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), a person who is required under section 3 to present himself for and submit to registration under such section shall file with the institution of higher education which the person intends to attend, or is attending, a statement of compliance with section 3 and regulations issued thereunder.

"(3) The Secretary of Education, in agreement with the Director, shall prescribe methods for verifying such statements of compliance filed pursuant to paragraph (2). Such methods may include requiring institutions of higher education to provide a list to the Secretary of Education or to the Director of persons who have submitted such statements of compliance.

"(4) The Secretary of Education, in consultation with the Director, shall issue regulations to implement the requirements of this subsection. Such regulations shall provide that any person to whom the Secretary of Education proposes to deny assistance or benefits under title IV for failure to meet the registration requirements of section 3 and regulations issued thereunder shall be given notice of the proposed denial and shall have a suitable period (of not less than thirty days) after such notice to provide the Secretary with information and materials establishing that he has complied with the registration requirement under section 3. Such regulations shall also provide that the Secretary may afford such person an opportunity for a hearing to establish his compliance or for any other purpose.".

(b) The amendment made by subsection (a) shall apply to loans, grants, or work assistance under title IV of the Higher Education Act for periods of instruction beginning after [June 30, 1983] *January 31, 1984.*

DISSENTING VIEWS ON H.R. 2145

H.R. 2145 proposes a 7-month delay in the July 1, 1983, implementation date of the Solomon amendment which denies Federal student financial assistance to young men who have failed to comply with the registration requirement established under the Military Selective Service Act. This bill should be rejected by the House because it departs from our longstanding system of checks and balances among the three branches of Government by anticipating the action of a Federal court, its original motivation—burdensome proposed regulations—has been addressed by workable final regulations, and it would establish a bad precedent by postponing a law under constitutional challenge.

FEDERAL COURT ACTION

When the Founding Fathers drafted the Constitution of the United States in 1787, a system of three separate and distinct branches of Government was envisioned. For the past 194 years, this system has worked well to protect our freedoms by creating a government of effective checks and balances. H.R. 2145 questions this history by departing from this system and anticipating the action of a Federal court.

Proponents of H.R. 2145 believe that enactment of a 7-month delay in the implementation of the Solomon amendment will avert possible problems in the delivery of Federal student financial aid for the 1983–84 academic year. These problems could result, proponents say, because of the preliminary injunction issued by Judge Alsop in *Doe* v. *Selective Service System.* Under some observers' interpretation of the injunction, financial aid officers, lenders in the GSL program, and others involved in the delivery of student aid are enjoined from taking any steps toward the implementation of the Solomon amendment. The effect, they hold, will be that student aid officers and others will have to attempt to obtain statements of registration compliance from students after applications have already been processed and awards of aid made.

We disagree with this argument. We believe the process of implementing the Solomon amendment after the injunction is lifted will be simple for both students and financial aid officers. The Secretary of Education and the Director of the Selective Service System have written to Chairman Perkins and stated that the injunction will not lead to major implementation problems. In addition, it should be noted that the injunction may not have an adverse effect on implementation at all. Some observers believe that the preliminary injunction applies only to the parties before the court (in this case six fictional plaintiffs). If this interpretation is correct, then implementation should go forward independently of the litigation in Minnesota.

The argument for H.R. 2145 that the injunction necessitates a 7-month delay in the effective date is thus premised on a particular interpretation of the preliminary injunction. We feel that Congress should not be acting on legislation which assumes a particular interpretation of actions of a Federal court which are, at best, ambiguous. We also

believe that the political pressures placed on the Department of Justice with regards to their handling of this litigation as a result of the pendency of legislation such as H.R. 2145 are extremely unfortunate. Procedural decision on the part of the Department of Justice, as attorneys for the Selective Service System and the Department of Education, should be made totally independent of considerations relating to pending Federal legislation. Action on H.R. 2145 makes this impossible.

Proponents of H.R. 2145 also believe that no implementation of the Solomon amendment should occur until the constitutional questions surrounding the amendment are resolved. Ironically, the enactment of this bill could delay resolution of these important issues. It should be obvious that any inclination on the part of Judge Alsop to entertain the government's request for expedited consideration of the *Doe* case will be undermined. Willl the proponents of H.R. 2145 be back with another 7-month delay if there is not a final disposition on the merits by February 1, 1984? Of course they will.

It should be noted that enactment of H.R. 2145 could also render the *Doe* case not ripe for decision. Under this argument, the attorneys for either side in *Doe* could move that the case be dismissed because there would no longer be any pressing need to decide the constitutionality of a law that would not become effective until February of 1984. While it is our sincere hope that the court's consideration of *Doe* will be completed in the near future, H.R. 2145 opens the possibility of the parties having to totally relitigate the issues at a future date.

WORKABLE REGULATIONS

In considering the arguments put forward by the proponents of H.R. 2145, it is important to realize that the original motivation for seeking a delay in the Solomon amendment effective date did not rest on the *Doe* case. The preliminary injunction in *Doe* was not issued until March 9, 1983. The original sponsors of legislation to delay the effective date opposed the proposed implementing regulations issued by the Department of Education on January 21, 1983. These proposed regulations were significantly revised and issued in final form by the Department of Education on April 11, 1983.

The final regulations issued by the Department of Education on April 11, 1983, represent a good faith attempt on the part of the administration to comprehensively address all of the concerns raised regarding the earlier set of proposed regulations. These concerns were specified in a letter sent to Secretary Bell by Chairman Paul Simon and 10 other members of the Subcommittee on Postsecondary Education on February 28. The basic objection to the January 21 proposed regulations expressed in that letter is that the regulations imposed an excessive and unnecessary burden on educational institutions. The revisions in the proposed regulations address these concerns.

The January 21 proposed regulations required that students applying for Federal student financial aid produce a verification letter issued by the Selective Service prior to receiving Federal student financial aid. Fears were expressed that many students may have difficulty in obtaining this letter from the Selective Service System. The final regu-

lations eliminate this requirement. The following provisions to implement the Solomon amendment are established:

1. For the 1983–84 and 1984–85 award years, the current statement of educational purpose would be expanded to include items concerning an individual's compliance with the registration requirements under the Military Selective Service Act. A student's response to these items would be considered sufficient to meet the requirements of the Solomon amendment. The institution may disperse funds under title IV of the Higher Education Act and certify a GSL or PLUS loan application after receiving the new signed statement of educational purpose/registration compliance from the student. The signed statement would be placed in the student's file and be subject, as any other title IV eligibility data, to the biennial audit procedures and the periodic onsite review of the administration of the student financial assistance programs. This audit review would include the Department of Education's verification of the registration information in accordance with procedures prescribed by the Secretary.

2. Beginning January 1, 1985, for the 1985–86 award year, only new title IV student aid recipients will be required to sign a statement of registration compliance and provide the registration acknowledgment letter or other proof of registration from the Selective Service System. The signed Statement as well as the registration acknowledgment letter would be placed in the students' files.

These provisions will eliminate virtually all of the burden that lenders and educational institutions face as a result of the Solomon amendment. We believe that support for H.R. 2145 on the basis of opposition to the regulations is no longer justified.

WILL H.R. 2145 ESTABLISH A BAD PRECEDENT?

Yes. As the legislative branch of the Federal Government we must avoid establishing a precedent for postponing the effective dates of Federal laws under constitutional challenge in the courts. We can envision a situation where constitutional challenges to certain statutes would be encouraged if opponents to these statutes knew that the filing of even a frivolous lawsuit would inspire legislation such as H.R. 2145. To avoid this situation from arising, we must let the courts do their work without legislative interference.

For all of these reasons, we believe that H.R. 2145 should be soundly defeated when it comes to the floor for consideration by the full House.

JOHN N. ERLENBORN.
MARGE ROUKEMA.
RON PACKARD.
STEVE BARTLETT.

INDIVIDUAL VIEWS OF HON. E. THOMAS COLEMAN

H.R. 2145 is legislation to delay the effective date of the Solomon amendment for 7 months. The Solomon amendment establishes compliance with the registration requirements established under the Military Selective Service Act as a prerequisite for receipt of benefits under Federal student aid programs. On January 11, 1983, the Department of Education published proposed implementing regulations. On April 11, 1983, the Department published a substantially revised set of implementing regulations in final form.

I am one of several members of the Committee on Education and Labor voting to report H.R. 2145 while at the same time continuing to support the Solomon amendment. I believe that a 7-month delay in the effective date of the Solomon amendment is necessary if severe disruptions in the delivery of student aid for the 1983–84 academic year are to be avoided.

Since H.R. 2145 was introduced on March 16, 1983, the Department of Education has revised its initial set of regulations to address most, if not all, of the objections raised by the education community regarding the first set of regulations. It had been widely expected that substantial revision of the implementing regulations, published in final form on April 11, 1983, would clear the way for the Solomon amendment to become effective on July 1, 1983.

Unfortunately, a new, major problem has arisen which makes a delay in the implementation of the Solomon amendment necessary. This problem is, of course, the effect of the injunction issued by Judge Alsop of the U.S. District Court in the *Doe* v. *Selective Service System*. If the arguments of the plaintiffs in the case are correct, the Department of Education, lenders in the guaranteed student loan program, financial aid officers, and others are prohibited from taking any steps toward implementing the Solomon amendment.

While I am hopeful that the Government will ultimately prevail in this litigation, I have become convinced that the injunction will probably make administration of the Solomon amendment unworkable for the 1983–84 academic year. The basic problem the injunction creates is that student financial aid officers and lenders will have to attempt to obtain statements of registration compliance from students after applications have already been processed and awards of aid made.

I expect that the courts will clarify the legal issues in *Doe* in the near future. If this occurs, H.R. 2145 may become unnecessary. Until that time, however, the need to assure the smooth administration of student financial aid programs necessitates favorable congressional action on H.R. 2145.

E. THOMAS COLEMAN.

INDIVIDUAL VIEWS OF HON. WILLIAM F. GOODLING ON H.R. 2145

When the House approved the Solomon amendment in July of 1982, I was among the 303 Members supporting it. I believed then, as I do now, that an individual who refuses to meet his obligations to society should not be allowed to participate in its benefits.

Soon after the Solomon amendment passed, the Department of Education and the Selective Service System began work on a set of regulations to implement the amendment. The first fruits of these efforts were published as a notice of proposed rulemaking on January 21, 1983. These regulations were deficient primarily because they placed an unreasonable burden on student financial aid offices not only to ascertain whether or not students had registered with the Selective Service System, but also to secure letter of registration compliance from them. Several colleges and universities from my district, including Penn State, wrote to me to request that I urge the Department to alter the regulations.

Partially as a result of the efforts of Mr. Simon and other members of the Subcommittee on Postsecondary Education, a set of revised regulations were announced to the subcommittee on March 23, 1983. These revised regulations were published on April 11, 1983, and address substantially all of the concerns raised by the education community regarding the earlier set of regulations. Most importantly, the revised regulations eliminated the burdensome and unnecessary requirement that educational institutions, lenders, and others secure letters of registration compliance from students before awarding them Federal student financial aid. I was personally gratified at the substantial improvement made in the regulations.

When H.R. 2145, legislation to delay the implementation date of the Solomon amendment for 7 months, came before the full Committee on Education and Labor, I voted against reporting the bill. I did so because the revised regulations implementing the Solomon amendment were satisfactory and because the arguments being circulated by proponents of H.R. 2145 regarding the effect on the *Doe* v. *Selective Service System* were unclear.

The scope of the preliminary injunction in *Doe* has been a subject of wide disagreement since it was first issued on March 9, 1983. Some observers believe it blocks implementation of the Solomon amendment nationwide; others believe it applies only as between the parties before the court. I am hopeful the scope of the injunction will be clarified by the district court in the next few weeks. At that time, if it appears as though the injunction will result in major disruptions in the processing and awarding of federal student aid, I intend to support H.R. 2145.

BILL GOODLING.

ADDITIONAL VIEWS ON H.R. 2145

On occasion Congress passes legislation that cannot be effectively implemented within the time allotted by the law. Such is the case with the Solomon amendment to last year's defense authorization bill.

A number of controversies and policy changes in the last few months have made the July 1, 1983, implementation of the Solomon amendment impossible without a severe strain on the proper, efficient, and timely processing of Federal student loan and grant applications.

As such, the 7-month delay in the implementation of the Solomon amendment contained in H.R. 2145 is both apropriate and necessary.

However, it is important to emphasize that H.R. 2145 does not represent a repudiation of either draft registration or of the intent of the Solomon amendment itself. Rather, it is simply a recognition that its implementation should not unreasonably interfere with the normal processing of financial aid applications.

Unquestionably, many of the concerns of the members of the Postsecondary Education Subcommittee were alleviated by newest regulations recently presented by the Department of Education and the Selective Service. They should be commended for their efforts. Despite this, considerable confusion remains on the status of the Solomon amendment implementation.

At the same time, it must be remembered that such financial assistance is a privilege, not a right. Accordingly, while some Members may disagree with justification for draft registration, it is appropriate for Congress to insist that draft registration laws—or any other Federal law—be obeyed in order to qualify for Federal financial assistance.

Certainly, there are those who oppose the whole concept of the draft and any attempts at draft registration. It is therefore understandable why they would also oppose the Solomon amendment and seek to repeal it.

H.R. 2145 is not, however, the proper forum in which to seek that repeal. Rather, the Education and Labor Committee has jurisdiction over only the Federal student loan and grant programs, not the draft registration process.

Accordingly, action on H.R. 2145 is limited to insuring that the implementation of the Solomon amendment does not unreasonably impact upon the effective administration of the student loan and grant programs. A delay i implementation at this time is in the best interests of our students and academic institutions.

STEVE GUNDERSON.

SEPARATE VIEWS OF FRANK HARRISON ON H.R. 2145

I oppose this bill, even though I greatly respect its author and his reasons for introducing it.

It is important to state at the outset that I wholeheartedly support the student loan program, without which many able young men and women would not be able to obtain a college education. I believe the student loan program is drastically underfunded, and I believe that it has been a grave error to reduce the funds available to it. We, as a nation, disparage ourselves and deny our children when we cut back on funds available for education. Our goal should be to insure that every young person can go as far as their ability and drive will take them. That was the purpose behind the student loan program, and I think it is a tragedy that we have denigrated our future by cutting back on its funding.

But I also believe that anyone who seeks a benefit from his Government should, at a minimum, obey its laws. That means that any young man who is required to register under the Selective Service Act should do so. And that any young man who refuses to do so should not, at the same time, be able to obtain a student loan on the same terms and conditions as other young men, sitting next to him in class, who have compiled with the law whether they like it or not.

For that reason, I support the law which provides that compliance with the Selective Service Act shall be a prerequisite condition to the receipt of federally funded student loans.

I could not, however, support the regulations which this administration originally drafted to enforce that law. Those regulations would have transferred a significant portion of the burden for enforcing the Selective Service Act from the Selective Service System and the Justice Department, where it belongs, to the colleges and universities of this Nation. I argued against those regulations during hearings of the Subcommittee on Postsecondary Education. I signed, with nine of my colleagues, a letter to the Secretary of Education protesting those regulations and asking that they be withdrawn.

Fortunately, those regulations have been withdrawn in favor of draft final regulations, 34 CFR Part 668, published on April 11, 1983. Those draft regulations follow, very closely, the suggestions set forth in our letter to the Secretary of Education.

I believe the verification by certificate, set forth in section 668.25 of the final draft regulations, is both simple and effective. As the supplementary information points out, it can be verified through periodic onsite program reviews conducted by departmental personnel who can, in consultation with Selective Service System personnel verify students' registration status.

These draft final regulations, which are to be effective for a 2-year period, fully comply with the assurances afforded by Under Secretary Jones when he appeared before the Subcommittee on Postsecondary Education.

I must add, however, that I remain completely opposed to section 668.25 which proposes to eliminate this simple and effective solution after 2 years and replace it with a complicated and convoluted process which can only burden our institutions of higher education and impede the processing of valid student loan applications. Particularly in an administration which has repeatedly emphasized its opposition to complicated Government regulations and unnecessary "paperwork," this prospective change from a simple to a complicated system is baffling.

I am pleased to note that the supplementary information states the Department's intention to evaluate the results of certificate verification during the 1984–85 academic year. I sincerely hope that such evaluation will lead to the conclusion that section 668.26 ought to be revoked.

One further point needs to be made. It has been claimed that the decision of the U.S. District Court for the District of Minnesota, *Doe* v. *Selective Service System* declaring the so-called Solomon amendment unconstitutional has caused great uncertainty in the educational community. For this reason, it is argued that the effective date of the law should be delayed pending final resolution of the constitutional challenge. The practical difficulty, of course, is that a 7-month delay would not be sufficient to allow all appeals to be exhausted. In fact, the delay might very well prolong the litigation since it would remove any incentive for an expedited hearing and decision.

Moreover, it seems to me that confusion and uncertainty caused by a decision of the Federal courts ought most properly be resolved within the judicial branch. Surely ample means, such as accelerated appeals, are available to the courts for that purpose. As a matter of policy, we should not delay the effective date of legislation because it has been declared unconstitutional by one Federal district court. Indeed, it has been fundamental law since *Marbury* v. *Madison* (1803) that the courts should be reluctant to invalidate acts of Congress and should do so only when their unconstitutionality is clear beyond all doubt. If it becomes the practice of Congress to delay the effective date of laws once they have been declared unconstitutional at the trial level, we might very well encourage the courts to do what 200 years of constitutional tradition commands they should do most hesitantly and only as a last resort.

FRANK HARRISON.

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